

## **M/S Vishal Transformer And Switchgears Pvt. Ltd. - Revisionist @HASH M/S Lal BrOthers - Opposite Party**

**Court:** ALLAHABAD HIGH COURT

**Date of Decision:** Oct. 17, 2016

**Acts Referred:** Transfer of Property Act, 1882 - Section 106, Section 107

**Citation:** (2016) 3 ARC 581 : (2017) 1 CivilLJ 133

**Hon'ble Judges:** Pankaj Mithal, J.

**Bench:** Single Bench

**Advocate:** Vivek Saran and P.N. Saxena, Senior Advocates, for the Revisionist; Abu Bakht and P.K. Jain, Senior Advocates, for the Opposite Party

**Final Decision:** Dismissed

### **Judgement**

Pankaj Mithal, J. - This is defendants revision under Section 25 of the Provincial Small Cause Courts Act, 1887 against the judgement and order

dated 24.08.2016 and the consequential decree of eviction from the premises in dispute Municipal No. 18 situate in village Rithani, Delhi Road,

Meerut passed by the Small Cause Court.

2. The suit of the plaintiff-respondent for rent and eviction filed on the basis of 30 days notice dated 04.04.2011 given under Section 106 of the

Transfer of Property Act has been decreed by the court below.

3. The only argument of Sri P.N. Saxena, Senior Counsel, assisted by Sri Vivek Saran, learned counsel for the defendant-revisionist is that the

premises was let out for manufacturing purposes and, therefore, in view of Section 106 of the Transfer of Property Act 1882 the tenancy would be

from year to year terminable by six months notice. The decree of eviction, therefore, on the basis of 30 days notice is bad in law.

4. Sri P.K. Jain, Senior Counsel, assisted by Sri Abu Bakht, learned counsel appearing for the respondent relying upon a decision of the Supreme

Court reported in AIR 2001 SC 1696 Samir Mukharjee v. Davinder K. Bajaj and others submits since there is no written registered lease

agreement, the lease cannot be treated to be from year to year basis even though, it may be for manufacturing purposes. Therefore, six months

notice is not necessary and the determination of tenancy by 30 days notice is perfectly valid.

5. There is no dispute to the facts that the concerned lease is in respect of a premises of a shed, which was let out for manufacturing purposes.

Both the parties admits that an agreement of lease was written but both of them have neither produced the same nor have brought on record by

any means the terms and conditions contained therein.

6. In view of the above, the lease though for manufacturing purposes is under an oral agreement or may be under a written agreement but

unregistered.

7. It is in the light of the aforesaid facts and circumstances that the Court has been called upon to determine if an unregistered lease for

manufacturing purposes would be a lease from year to year or on month to month basis determinable by six months or 30 days notice.

8. Section 106 of the Transfer of Property Act, 1882 (hereinafter referred as "the Act") provides that a lease of immovable property for

agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on part of either of the parties to the lease by

six months notice and any other lease shall be deemed to be of month to month terminable by either of the parties by giving 15 days notice, unless

there is something contrary.

9. The relevant part of Section 106 (1) of the T.P. Act is reproduced here below:-

In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall

be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable

property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen

days" notice.

10. Section 107 of the T.P. Act provides for the manner of executing the lease deeds. It provides that a lease of immovable property from year to

year or for exceeding one year or reserving a yearly rent can be made only by a registered instrument and that all other leases of immovable

property may either registered or oral accompanied by delivery of possession.

11. The relevant part of Section 107 of the T.P. Act is quoted below:-

A lease immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered

instrument.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of

possession.

.....

12. A composite reading of both the above provisions reveals that Section 106 of the Act categorises leases of immovable property into two

categories, one for agricultural and manufacturing purposes which shall be deemed to be a lease from year to year terminable by six month notice

and all others on month to month basis terminable by notice of 15 days.

13. The aforesaid provision is a deeming provision and apart from categorising the leases in two categories and providing for time to determine

them, it does not provide anything further, certainly not the manner of execution of a lease for agricultural or manufacturing purposes or of a lease

for any other purpose.

14. The manner of execution of the lease has been provided in Section 107 of the T.P. Act. It postulates that where the lease is from year to year

or exceeding one year it can only be made by a registered instrument. Therefore, on the conjoint reading of both the provisions it is implicit that a

lease which is from year to year basis or for exceeding a term of one year whether for agricultural or manufacturing purposes or otherwise can only

be executed by registered instrument. In the event, there is an orally lease or an unregistered instrument creating a lease for agricultural or

manufacturing purposes or for a term of more than one year, it would be void and would be treated as a ordinary lease for purpose other than

agricultural or manufacturing and for less than a year only.

15. A Bench of four Judges of the Supreme Court in Ram Kumar Das v. Jagdish Chandra Deo, AIR 1952 SC 23 held that Section 106 of

the T.P. Act applies when there is no period of lease agreed upon between the parties in which case the term of the lease has to be determined by

reference to the object with which the tenancy is created by the parties.

16. In view of the above decision, the purpose of Section 106 of the T.P. Act is only limited to ascertainment of the period of lease and providing

for the notice period for its determination when the lease period is not specifically provided by the lease and nothing else.

17. In Janki Devi Ghagat Trust Agra v. Ram Swarup Jain (dead) through L.Rs. AIR 1995 SC 2482 it was held that a lease of immovable

property from year to year or for a term exceeding one year can only be made by registered instrument and any lease of this kind would be void if

it is not so created.

18. In view of the plain reading of both the above provisions and on consideration of the above two decisions of the apex court, the following

inferences are certain:

(I) A lease of immovable property can be oral or in writing by registered instrument.

(ii) A lease of year to year or exceeding one year or reserving a yearly rent must be in writing by a registered instrument.

(iii) A lease for agricultural or manufacturing purpose shall be deemed to a lease from year to year terminable by six months notice if the lease

period is not provided in the lease specifically; and

(iv) any other lease would be from month to month terminable of 15 days notice (30 days in U.P.).

Thus, it means where a lease of immovable property is for manufacturing purpose is shall be deemed to be a lease from year to year and is

required to be by means of a registered instrument. In case it is not by a registered instrument it will not be a yearly lease rather a lease on month to

month basis terminable vide 15/30 days notice as the case may be.

19. This leads me to hold that there are two conditions required to be fulfilled for a holding a lease to be on yearly basis i.e.

(i) it should be for agricultural or manufacturing purposes;

(ii) it must be created by registered instrument

If any one of the above conditions is missing it would be a lease from month to month only.

20. In the case of Samir Mukahrji (supra), the Court was ceased of an identical controversy and the argument was that since the lease was for

manufacturing purpose the legal presumption as envisaged under Section 106 of the T.P. Act would apply meaning thereby that the tenancy would

be from year to year terminable by six months notice and not by 15 days.

21. The Apex Court dealt with the provisions of Section 106 and 107 of the T.P. Act and held that though the lease was for manufacturing

purposes but as there was no registered written instrument of lease as contemplated by Section 107 of the T.P. Act, the Rule of construction as

envisaged in Section 106 of the T.P. Act would not be applicable. Therefore, the plea that 15 days notice for terminating the tenancy is bad in law

is not sustainable.

22. The aforesaid decision squarely applies to the fact situation of this case and leaves no room for me to take a different stand. Accordingly, the

lease for manufacturing purpose may be deemed to be early lease but as it has not been created by a registered instrument it would be treated to

be a lease on month to month basis which can be determined by 15 days notice or 30 days in U.P.

23. Learned counsel for the revisionist has sited Indra Sain Bedi (Dead) v. Chopra Electricals (2004) 7 SCC 277. The aforesaid decision lays

down that the tenancy for manufacturing purposes can be created for a period of less than one year by mutual agreement for which 15 days notice

would be required to determine it and not six months notice.

24. The aforesaid authority is of no help to resolve the controversy in dispute and is not applicable to the facts of this case.

25. In view of the aforesaid facts and circumstances of the case, the argument raised in this revision stand duly answered by the above decision of

the Supreme Court in the case of Samir Mukharji (supra) and as the lease though for the manufacturing purposes was not created by registered

instrument of lease, it cannot be a lease from year to year which may require determination by notice of six months rather it would be treated as a

month to month tenancy terminable by 15/30 days notice.

26. Accordingly, there is no merit in the submission advanced and the revision. It accordingly fails and is dismissed.